

BILL NO. 2023-14

RESOLUTION NO. 2023-14

A RESOLUTION AUTHORIZING THE MAYOR OR CITY ADMINISTRATOR TO EXECUTE AN ABATEMENT ORDER ON CONSENT BETWEEN THE CITY OF WEST PLAINS, MISSOURI, AND THE MISSOURI DEPARTMENT OF NATURAL RESOURCES.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of West Plains, Missouri as follows:

Section 1. That the Mayor or City Administrator is hereby authorized to execute on behalf of the City of West Plains an Abatement Order on Consent with the MISSOURI DEPARTMENT OF NATURAL RESOURCES to resolve past violations of the Missouri Clean Water Law, with the agreement to be in substantially the same form as attached to this resolution.

Section 2. This resolution shall be in full force and effect from and after the date of its passage and approval.

Passed by the City Council and signed by the Mayor this 17th day of July, 2023.

  
\_\_\_\_\_  
Michael Topliff, Mayor

Attest:

  
\_\_\_\_\_  
Allison Skinner, City Clerk

**BEFORE THE MISSOURI DEPARTMENT OF NATURAL RESOURCES**

**In the Matter of:** )  
 )  
           **The City of West Plains** )           **Order No. 2023-WPCB-1749**  
 )  
**Proceeding under the** )  
**Missouri Clean Water Law** )

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**ABATEMENT ORDER ON CONSENT**

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The issuing of this Abatement Order on Consent (AOC) No. 2023-WPCB-1749, by the Missouri Department of Natural Resources (Department), is a formal administrative action by the State of Missouri and is being issued because the City of West Plains (Respondent) has violated and anticipates violating the Missouri Clean Water Law (MCWL). This AOC is issued under the authorities of Sections 644.056 and 644.079, Revised Statutes of Missouri (RSMo). Failure to comply with this AOC is, by itself, a violation of Section 644.076.1, RSMo. Litigation may occur without further notice if there is not compliance with the requirements of this AOC. This AOC does not constitute a waiver or a modification of any requirements for the MCWL, or its implementing regulations, all of which remain in full force and effect. Compliance with the terms of this AOC shall not relieve the Respondent of liability for, or preclude the Department from, initiating an administrative or judicial enforcement action to recover civil or administrative penalties for any future violations of the MCWL, or to seek injunctive relief, pursuant to Chapter 644, RSMo.

**FINDINGS OF FACT**

1.       The Respondent is a charter city with a population of approximately 12,290 residents. The Respondent owns and operates a wastewater treatment facility (WWTF) that

consists of a bar screen, grit removal, influent screw pumps, oxidation ditch, four clarifiers, sand filter, Ultra-violet (UV) disinfection, and six aerobic sludge holding tanks. The WWTF is located 0.34 miles south of 1508 Country Road, West Plains, Howell County, Missouri. The WWTF has a design population equivalent of 15,600, a design flow of 3.0 million gallons per day (MGD) and an actual flow of 1.8 MGD. Treated effluent discharges through Outfall No. 001 of the WWTF to Howell Creek, a losing stream, subject to the conditions and requirements of Missouri State Operating Permit No. MO-0096610 (Permit).

2. Howell Creek and its tributaries are waters of the State as the term is defined by Section 644.016(27), RSMo.

3. Domestic wastewater is a water contaminant as the term is defined by Section 644.016(24), RSMo.

4. A "Release" is a discharge directly or indirectly to waters of the state, or to place, cause, or permit to be placed, any water contaminant in any location where it is reasonably certain to enter waters of the state, as the term is defined by 10 CSR 20-2.010(67).

5. The Permit requires the Respondent to collect representative samples of the effluent discharged from Outfall No. 001 and analyze the sample for the contaminants listed in Part "A" every month. The Permit requires the effluent to comply with the limitations contained in Part "A" of the Permit and requires the Respondent to submit the results of the analysis to the Department on monthly Discharge Monitoring Reports by the 28<sup>th</sup> day of the month following the reporting period.

6. The Permit sets final *E. coli* effluent limitations as a Daily Maximum of 126 #/100 milliliters (mL). The Permit sets final Ammonia as Nitrogen effluent limitations as a Daily Maximum of 5.9 mg/L and a Monthly Average of 1.2 mg/L from April 1 to September 30 of

each year, and a Daily Maximum of 10.9 mg/L and a Monthly Average of 2.1 mg/L from October 1 to March 31 of each year.

7. Effluent discharged from Outfall No. 001 of the WWTF failed to comply with effluent limitations contained in the Permit. See Exhibit 1 of this AOC for list of effluent violations.

8. As of April 24, 2023, the City has reported sixteen releases at the WWTF during wet weather events since January 1, 2022. These releases are due to hydraulic overloading of the facility leading to the discharge of partially treated wastewater to the WWTF outfall or the ground surrounding the WWTF. See Exhibit 2 of this AOC for a list of releases.

9. On May 18, 2022, the Department received a *Wastewater Treatment Plant Evaluation*. The *Evaluation* notes that “influent flows over 3.5 MGD threaten compliance with effluent *E. coli* limits and start to cause structures to backup due to undersized yard piping.”

10. The Respondent was one of the communities that received assistance from the Missouri Public Utility Alliance through the Department’s Technical Assistance Grant. The Respondent developed the IMP to align with EPA’s 2012 Framework and outlined future planning efforts over the next 30 years for wastewater, drinking water and stormwater.

11. On April 26, 2022, Department staff conducted a site inspection of the WWTF. During the inspection, staff observed the clarifiers hydraulically overloaded and the sand filters being bypassed due to a significant amount of rain that increased flows into the facility. The facility was found in non-compliance for not meeting Ammonia as Nitrogen and *E. coli* final permitted limitations set forth in their permit during times of high flows. The Respondent informed the Department that they were working in the collection system to reduce Infiltration

and Inflow, working with an engineer for future upgrades and had developed a 30-year IMP to address these and other issues.

12. On May 5, 2022, the Department met with the Respondent to discuss their compliance challenges during wet weather events and the draft IMP.

13. On April 18, 2022, the Department received correspondence from the Respondent indicating the City Council adopted the IMP. On May 11, 2022, the Department received the final IMP from the Respondent for the Department's review and concurrence with the IMP. For the purpose of this AOC, the Department concurs with and hereby incorporates the IMP's terms, conditions and timeframes as a schedule of compliance in this agreement. Additionally, IMPs are to be managed adaptively based upon new information and resources becoming available, and therefore it is the Department's expectation that the timeframes and the schedule of compliance will adjust accordingly based upon new information.

14. On May 13, 2022, the Department received correspondence from the Respondent formally requesting an AOC to address ongoing and future violations of the Permit regarding SSOs, bypasses and permitted effluent limitation exceedances during "bypass" events.

#### **STATEMENT OF VIOLATIONS**

The Respondent has violated and anticipates that during the Respondent's projects outlined in the IMP to upgrade the WWTF, the Respondent will continue to violate the MCWL and its implementing regulations during periods of wet weather events leading to inflow greater than 3.5 MGD that cause hydraulic overloading at the WWTF resulting in a release as follows:

15. Exceed the permitted effluent limitations contained in Part "A" of the Permit for Ammonia as Nitrogen and *E. coli*, during wet weather events, in violation of Sections 644.051.1(3) and 644.076.1, RSMo.

16. Placing or causing or permitting to be placed a water contaminant, domestic wastewater, in a location where it was reasonably certain to cause pollution of waters of the state, during times of wet weather events when the facility receives more than 3.5 million gallons per day and results in hydraulic overloading of the WWTF, in violation of Sections 644.051.1(1) and 644.076.1, RSMo.

### AGREEMENT

17. The Department and the Respondent desire to amicably resolve all claims that may be brought against the Respondent for violations alleged above in Statement of Violations.

18. The provisions of this AOC shall apply to and be binding upon the parties executing this AOC, their successors, assigns, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties. Any changes in ownership or corporate status, including but not limited to any transfer of assets or real or personal property, shall not affect the responsibilities of the Respondent under this AOC.

19. In the period of time from the effective date of this AOC until the new or upgraded WWTF is completed, the Respondent is ordered and agrees to operate and maintain the existing WWTF at all times in compliance with the conditions and requirements of the Permit, with the exception of *E. coli* and Ammonia as Nitrogen limits, and releases during wet weather events. The Respondent is ordered and agrees to operate and maintain the existing WWTF to the best of its ability to reduce bacteria and Ammonia as Nitrogen to as close to the permitted effluent limitations as possible, and to take steps to minimize and prevent the number of releases during wet weather events to the best of its ability, as appropriate. All units or components of the

existing WWTF shall be maintained in an operable condition, even if this requires the purchase and installation of new parts or equipment, or repair of the WWTF.

20. Immediately upon execution of the AOC, the Respondent is ordered and agrees to implement phase 1a of the IMP's 30-Year Wastewater and Stormwater Spending Projection Plan (Appendix A.1 of the IMP) as it pertains to improvements to the WWTF, which shall be incorporated herein as an enforceable condition of this AOC.

21. In the event the Respondent updates the IMP as a result of new information, which may directly or indirectly affect the schedule of phase 1a improvements to the WWTF to bring the facility back into compliance with the MCWL, the Respondent agrees and is ordered to send the proposed changes to the Department for review and approval.

22. The Department may approve updated IMP schedules of compliance, in writing, for purposes of incorporation into this AOC.

23. If additional funds become available to the Respondent through any State or Federal low interest loan or grant program, for the purpose of wastewater, stormwater or drinking water improvements, the Respondent is ordered and agrees to revise the 30-Year Wastewater and Stormwater Spending Projection in the IMP with respect to the City's financial capability and ratepayer affordability to resolve issues of non-compliance as addressed in this AOC.

24. Pursuant to Element 4 of the Department's Integrated Management Framework, the Respondent is ordered and agrees to submit to the Department annual reports each year to be submitted by January 28 for the preceding calendar year that evaluate the Respondent's financial capabilities to implement and complete phase 1a of the IMP. As part of the annual report, the

violations of this AOC or any law or regulation. Consistent with 10 CSR 20-3.010(5), this AOC shall not be construed as satisfying any claim by the state or federal government for natural resource damages.

32. Nothing in this AOC forgives the Respondent from future non-compliance with the laws of the State of Missouri, nor requires the Department or State of Missouri to forego pursuing by any legal means for any non-compliance with the laws of the State of Missouri. The terms stated herein constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those expressly set forth herein. The terms of this AOC supersede all previous memoranda of understanding, notes, conversations, and agreements, express or implied. This AOC may not be modified orally.

33. By signing this AOC, all signatories assert that they have read and understood the terms of this AOC, and that they have the authority to sign this AOC on behalf of their respective party.

34. The effective date of the AOC shall be the date the Department signs the AOC. The Department shall send a fully executed copy of this AOC to the Respondent for their records.

#### **COST ANALYSIS FOR COMPLIANCE**

35. Pursuant to Section 644.145.2(1)(c) and in recognition of the financial analysis described in the IMP, the Respondent hereby waives the requirement for the Department to develop a Cost Analysis for Compliance or other finding of affordability with respect to the requirements of this AOC. The Respondent acknowledges that this waiver was not required by the Department as a condition to enter this AOC.

#### **NOTICE OF APPEAL RIGHTS**



36. By signing this AOC, the Respondent consents to its terms and waives any right to appeal, seek judicial review, or otherwise challenge the terms and conditions of this AOC, pursuant to Sections 621.250, 640.010, 640.013, 644.056.3, 644.079.2, Chapter 536 RSMo, 644.145, RSMo, 10 CSR 20-1.020, 10 CSR 20-3.010, 10 CSR 20-6.020(5), the Missouri Constitution, or any other source of law.

**SIGNATORY AUTHORITY**

Agreed to and Ordered on this 17<sup>th</sup> day of July, 2023

  
\_\_\_\_\_  
The Honorable Mike Topliff, Mayor

Agreed to and Ordered on this \_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
DEPARTMENT OF NATURAL RESOURCES  
John Hoke, Director  
Water Protection Program

c: Brad Ledbetter, Director, Southeast Regional Office  
Operating Permits Section  
General Counsel's Office

**Exhibit 1. Permitted Effluent Limitation Violations**

Reporting Date	Effluent Parameter	Daily			Weekly			Monthly		
		Effluent Limit	Reported Value	Percent over limit	Effluent Limit	Reported Value	Percent over limit	Effluent limit	Reported value	Percent over limit
6/30/22	<i>E. coli</i> (#/100mL)	126	9999	7,836%	--	--	--	--	--	--
5/31/22	<i>E. coli</i> (#/100mL)	126	>126	-	--	--	--	--	--	--
4/30/22	<i>E. coli</i> (#/100mL)	126	>126	-	--	--	--	--	--	--
2/28/22	<i>E. coli</i> (#/100mL)	126	>126	-	--	--	--	--	--	--
6/30/21	<i>E. coli</i> (#/100mL)	126	>126	-	--	--	--	--	--	--
5/31/21	<i>E. coli</i> (#/100mL)	126	>126	-	--	--	--	--	--	--
6/30/22	Ammonia as N (mg/L)	5.9	11.8	100%	--	--	--	9.01	651%	651%
5/31/22	Ammonia as N (mg/L)	5.9	9.89	68%	--	--	--	6.19	416%	416%
4/30/22	Ammonia as N (mg/L)	5.9	5.11	--	--	--	--	2.416	101%	101%
6/30/21	Ammonia as N (mg/L)	5.9	5.67	--	--	--	--	2.08	73%	73%
5/31/21	Ammonia as N (mg/L)	5.9	5.52	--	--	--	--	3.193	166%	166%

**Exhibit 2. Wet Weather Releases at the WWTF Reported 2022-2023\***

Start Date	End Date	Location	Estimated total volume released (gallons per day)	Was wastewater discharged outside of outfall?
5/05/2022	5/12/2022	Oxidation ditch	28,284,700	Yes

4/05/2023	4/06/2023	Oxidation ditch	1,340,000	Yes
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\*Data reported by the Respondent.